



# Nebraska Resources

## Newsletter

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### Inside this Issue:

Issue 11, Summer 2003

- Republican River Data/cover and page 2
- Water Policy Task Force/cover and page 5
- NRDF Project Proposals/page 2
- 2003 Legislative Bills/page 3
- NRDF Funds Obligated/page 3
- Tracts Scheduled for Sale/page 3
- Missouri River Update/page 4

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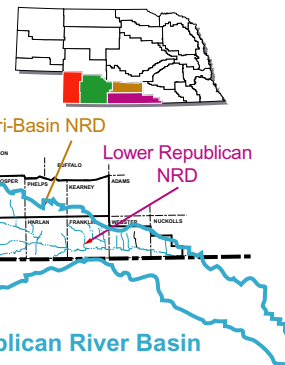
<http://www.dnr.state.ne.us>

## Data Gathering in the Republican River Basin

By Mike Thompson

Nebraska is now implementing the provisions of the KS v. NE lawsuit settlement on the Republican River. A key element in the settlement is that groundwater pumping by upland wells needs to be measured and reported along with alluvial wells and surface water use to determine compliance with the Republican River Compact (Compact). It is imperative that Nebraska provides accurate information to the Compact Administration to make sure that we neither over use our allocation nor over estimate our use, which would result in unnecessary restrictions on water use.

The Department of Natural Resources (DNR) and the Republican River Natural Resource Districts (NRDs) have undertaken a large data gathering and reporting project. Water supply and use information including stream flow, canal and pump diversions, alluvial and upland well pumpage, climatic records and municipal and industrial water uses, will need to be assembled and reported annually. Some of the information collected is the same as has been collected for decades and some will be new.



*Continued on page 2*

### Update on

## NEBRASKA

### Water Policy Task Force

by Jim Cook



In the Summer 2002 issue of *Nebraska Resources* we identified the members of the Water Policy Task Force created by LB 1003, a bill adopted by the 2002 Nebraska Legislature. Also identified in that article were the fourteen members of the Executive Committee. One change in membership has occurred. Duane Hovorka, executive director of the Nebraska Wildlife Federation, has been appointed as one of the three environmental representatives to the Task Force. Duane replaced Paul Currier who unfortunately died after heart surgery in April of this year. Paul was also the environmental representative to the Executive Committee and Dave Sands has replaced him in that capacity.

The Executive Committee has been meeting about once a month and has been developing recommended alternatives and positions for consideration by the forty-nine member Task Force. Subcommittees created by the Executive Committee have been meeting more frequently. The full Task Force has met about once every three months and will meet again in mid-September and mid-November to finalize its work. Members of the public are invited to attend meetings of the Task Force and the Executive Committee. More information about the schedule and location of those meetings can be found on the Department's website at <http://www.dnr.state.ne.us>. Also available on that site are some of the materials being considered by the Task Force.

*Continued on page 5*

*Republican River Basin Continued from page 1*

The Republican River Compact Administration has approved a groundwater model that will be used to determine the amount and timing of depletions to stream flow by groundwater use in accordance with the Compact. The output data from the model will be used to compute the annual virgin water supply and each state's allocation of water use.

There are new requirements for annual on-farm reporting of water use in specified alluvial and upland areas of the Republican River Basin. For surface water irrigators, Nebraska will provide the water right number, type of use, system type, location, diversion amount, and acres irrigated. Annual groundwater use tabulation through the representative NRDs will include: the well registration number, well location, delivery system type, and irrigated acreage. Crop distribution will be provided on a county basis, but may be requested on an individual basis for better calculation of the consumptive use of the water supply.

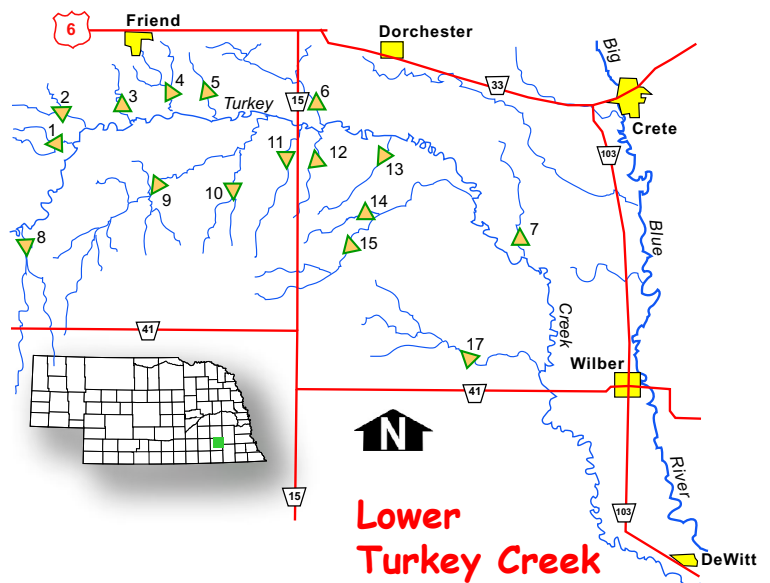
The NRDs are requiring water meters to be installed on upland irrigation wells. Meters were previously installed on alluvial wells and surface water pumps. The installation process will be completed by the end of 2005. Once a meter is installed, the volume pumped will be recorded and used in the annual Compact Accounting Procedures. Since many wells will not have meters installed in 2003, an alternate method of estimating pumpage will be used. Irrigators will be asked to provide information about the number of acres being irrigated, crop type, application system type, power plant (electric, diesel), hours of use and flow rate. The NRDs may verify flow rate using ultrasonic meters and location using GPS equipment.

Collecting all these data will be a tremendous burden on the State, the NRDs and the individual irrigators. We will all have to work together to look for ways to make data collection more efficient. At the same time, it is imperative that the data be accurate, so that we can make the maximum use of our allocation without violating the Compact.

## Commission Acts on Two NRDF Project Proposals

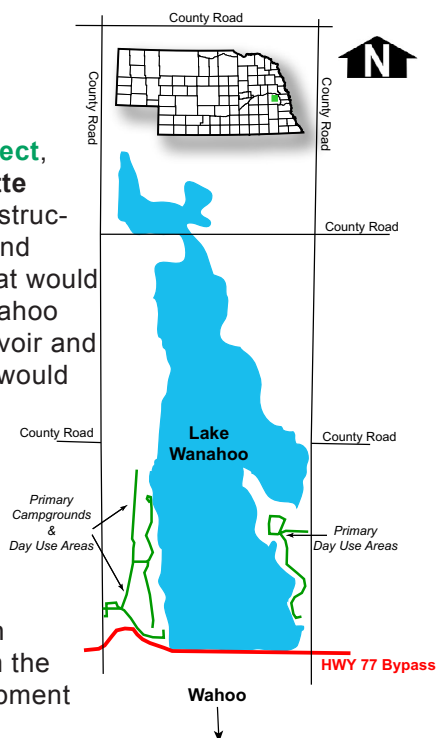
By Tom Pesek

At its July 9, 2003, meeting in Chadron, the Natural Resources Commission advised the sponsors of two **Natural Resources Development Fund** project proposals that they could proceed with the preparation of project applications and feasibility reports. **The Lower Big Blue NRD** is sponsoring the **Lower Turkey Creek Watershed Project**, which consists of 16 floodwater retarding structures (dams) in Saline County. The inclusion of additional storage for streamflow augmentation will be considered in this project. The project's **estimated cost is approximately \$4,400,000** at this time.



## Lake Wanahoo

The **Lake Wanahoo Project**, sponsored by the **Lower Platte North NRD**, involves the construction of an earthen dam on Sand Creek just north of Wahoo that would carry the U.S. Highway 77 Wahoo By-pass. The resulting reservoir and associated wetland complex would total 639 acres. The primary project purposes are environmental restoration, flood control and recreation. The Corps of Engineers is the principal funding source for the project and the **NRD has requested \$6,500,000** in state funding assistance from the Nebraska Resources Development Fund.





## 2003 Legislative Bills

which become effective on  
August 31, 2003

By Dave Vogler

As a reminder, there are a number of bills that were passed during the 2003 Legislative Session which will become effective on August 31. These bills are:

**LB 34** which raises the application fee for a permit to drill a well in a Natural Resources District Management Area under statute 46-656.29 from seventeen dollars and fifty cents (\$17.50) to fifty dollars (\$50.00). That fee is payable directly to the Natural Resources District. Applications for a late permit remain the same at two hundred fifty dollars (\$250.00).

**LB 35** amends statute 46-656.30 by deleting the limited beneficial use language, which limited the definition of beneficial use for wells to domestic, agricultural, manufacturing, or industrial purposes. With this change an application for a permit for a water well in a management area can only be denied if the Natural Resources District finds that the permit is in conflict with regulations or controls adopted by the District, that the proposed use would not serve any beneficial use, or [in the case of a late permit] the applicant did not act in good faith to obtain a timely permit. The Natural Resources District would make the beneficial use determination.



**LB 93** changes the definition of best management practices 46-656.07 to include the rate and timing of fertilizer application and eliminates the 'timing of pesticide' applications, because pesticide applications are adequately controlled by the various State and Federal laws. A Natural Resource District proposing a fertilizer limitation needs to consult with the University of Nebraska or a certified crop advisor.

One other bill, **LB 31**, will not become effective until January 1, 2004. LB 31 raises registration fee for water wells from thirty dollars (\$30.00) to forty dollars (\$40.00). This is in addition to the fee collected by HHSS Regulation and Licensure. Starting January 1, the Department will no longer fund the well registration update program one half from the Water Well Decommissioning Fund and one half from the Water Well Contractors Fund, but will use the increased registration fee to pay for that program.

### NRDF FUNDS OBLIGATED FOR FY 2004

By Tom Pesek

The Natural Resources Commission obligated a total of **\$3,625,068.87** in Nebraska Resources Development Fund (NRDF) funds at its meeting in Chadron. The funds (all grants) were available to project sponsors on a reimbursement basis effective July 1, 2003.

The **Lower Platte South NRD** received an obligation of **\$1,505,160** to continue Right-of-Way acquisition and relocation work on the **Antelope Creek Project in Lincoln**. The **Lower Loup NRD** received **\$183,108.87** for final design and construction on the **Lake Ericson Project at Ericson**. The **Western Sarpy/Clear Creek Project**, sponsored by the **Papio-Missouri River NRD** and located on the Platte River near Ashland, was obligated **\$1,332,000** for additional Right-of-Way work. The Lower Platte North NRD and Lower Platte South NRD are also actively involved in this project through an interlocal agreement. The **Little Blue NRD** received an obligation of **\$604,800** to construct structures 30 and 61 of the **Little Sandy Creek Watershed Project**. These structures are located near Alexandria and Tobias respectively.

### Tracts Scheduled For Sale in FY 2005

By Tom Pesek

The Natural Resources Commission recently scheduled the disposal (sale) of eight tracts of land that were acquired in fee title with state funds through the **Small Watersheds Flood Control Fund**. These tracts will first be offered at appraised market value to certain state agencies and local subdivisions of government for public use. If no interest is shown, they will be sold at auction in January 2005.

The first tract is 149.8 acres at Site 88 of the Middle Big Nemaha Watershed, a project sponsored by the Nemaha NRD. Located near Crab Orchard, the tract is mostly grassland and includes 32 acres of the 36-acre reservoir.

The other seven tracts are all associated with the Big Papio Channel Project in Omaha and range in size from 0.39 acres to 4.12 acres. These tracts were part of the Right-of-Way needed by the Papio-Missouri River NRD to construct the project.

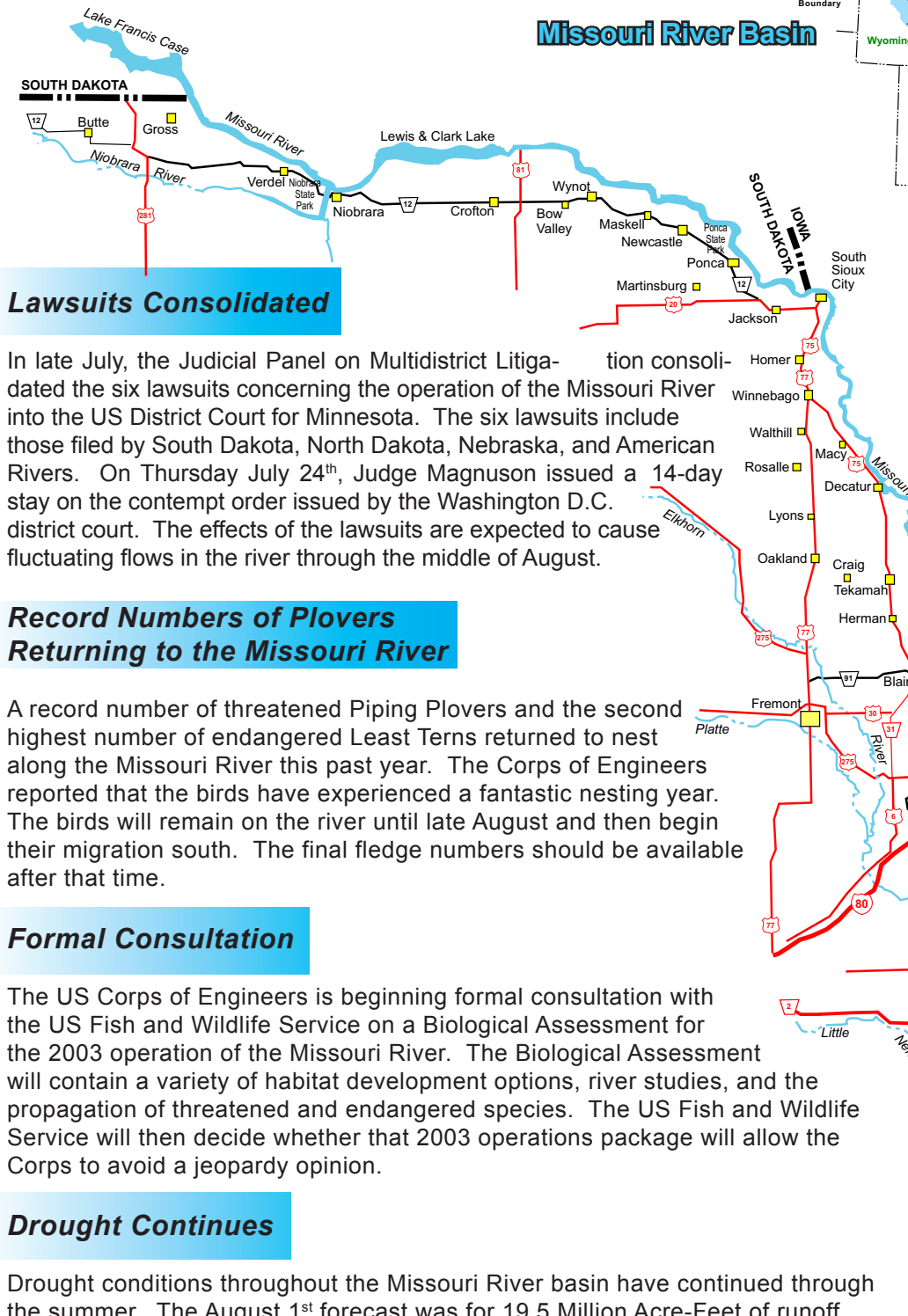
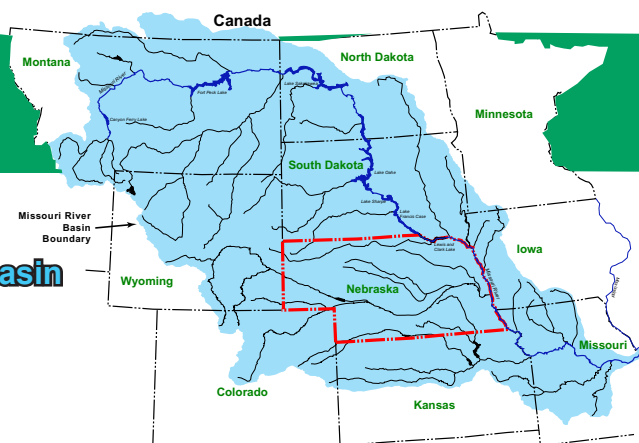
The proceeds from the sale of the tracts will be returned to the Small Watersheds Flood Control Fund to assist the sponsors of future flood control projects with the acquisition of necessary land rights, either by easement or fee title.

# Missouri River Basin

.....Update on a River

By Jeff Shafer

## Missouri River Basin



### Lawsuits Consolidated

In late July, the Judicial Panel on Multidistrict Litigation consolidated the six lawsuits concerning the operation of the Missouri River into the US District Court for Minnesota. The six lawsuits include those filed by South Dakota, North Dakota, Nebraska, and American Rivers. On Thursday July 24<sup>th</sup>, Judge Magnuson issued a 14-day stay on the contempt order issued by the Washington D.C. district court. The effects of the lawsuits are expected to cause fluctuating flows in the river through the middle of August.

### Record Numbers of Plovers Returning to the Missouri River

A record number of threatened Piping Plovers and the second highest number of endangered Least Terns returned to nest along the Missouri River this past year. The Corps of Engineers reported that the birds have experienced a fantastic nesting year. The birds will remain on the river until late August and then begin their migration south. The final fledge numbers should be available after that time.

### Formal Consultation

The US Corps of Engineers is beginning formal consultation with the US Fish and Wildlife Service on a Biological Assessment for the 2003 operation of the Missouri River. The Biological Assessment will contain a variety of habitat development options, river studies, and the propagation of threatened and endangered species. The US Fish and Wildlife Service will then decide whether that 2003 operations package will allow the Corps to avoid a jeopardy opinion.

### Drought Continues

Drought conditions throughout the Missouri River basin have continued through the summer. The August 1<sup>st</sup> forecast was for 19.5 Million Acre-Feet of runoff above Sioux City. This will mark the fourth consecutive year in which the annual runoff has fell below the median runoff level of 25.4 MAF. As a result of the drought, system storage has dropped to 44.3 MAF, a level that hasn't been experienced since the drought of the late 80's.

Missouri River near Ponca, Nebraska



Missouri River near Omaha, Nebraska





*Update on Nebraska Water Policy Task Force Continued from page 1*

Lots of work remains to be done, but both groups have been making good progress. **Four** related but somewhat distinct issues have received the attention of the Task Force and are likely to produce some recommended legislation. The **first** is modification of the Groundwater Management and Protection Act to provide for a more proactive way of addressing conflicts between the use of surface water and hydrologically connected groundwater. A draft of legislation to implement that more proactive process would require the Department of Natural Resources

# 4 Issues

- **Modification of the Groundwater Management and Protection Act.**
- **Need to revise current Nebraska law relating to the transfer of surface water rights.**
- **Whether water rights should be transferable from one type of use to another.**
- **Reviewing present law relating to transfers of groundwater.**

to annually evaluate the river basins of the state to determine which, if any of those basins are "fully appropriated." Then existing uses of both surface water and hydrologically connected groundwater would be considered when that determination was made. If the department preliminarily determined that a stream or reach was then fully appropriated, temporary stays on granting new surface water and groundwater uses and on expanding existing uses would immediately go into effect. Those stays could be converted to temporary moratoria that would last no longer than a maximum of five years while the department, the affected natural resources districts, and the surface water users in that area worked together to prepare a plan for management of both the surface water and hydrologically connected groundwater resources. The objective of the plan would be to "sustain a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the basin, sub-basin or reach can be achieved and maintained for both the near term and the long-term." If the department and the natural resources districts involved reached agreement on the contents of the plan and on the management methods needed to achieve the objectives of the plan, public hearings would be held and regulations to implement the plan would be adopted by both the department and the NRDs. If agreement could not be reached, the dispute would be forwarded to and resolved by a five-member Inter-related Water Review Board, which would be appointed by the Governor. Three of the members of that board would have to be from a list of nominees provided to the Governor by the Nebraska Natural Resources Commission.

A **second** issue being addressed by the Executive Committee and the Task Force is the need to revise current Nebraska law relating to the transfer of surface water rights. This legislation will likely included some housekeeping corrections to the current law and address what is called "spreading" of water. In water right jargon, "spreading" means to apply the amount of water that can be diverted from the stream to a greater number of acres than are authorized by the water right. The primary issue to be considered is whether and to what extent "spreading" increases consumptive use of the surface water supply and therefore adversely affects other water appropriators.

**Another surface water right issue** is whether water rights should be transferable from one type of use to another. Under current law, a water right may be transferred only to a use in the same preference category as the original use. For example, a right for irrigated agriculture can only be transferred to another agricultural use. Therefore, the current law does not allow such rights to be transferred to a municipality, to environmental uses, or to other non-agricultural purposes.



While final decisions have not yet been made, the Task Force does not appear likely to recommend elimination of the preference category restriction for **permanent** water right transfers. However, **temporary** transfers

up to thirty years to other types of uses through water right leases appear to be more acceptable to the members. **Finally**, the Task Force is reviewing present law relating to transfers of groundwater. Those transfers can be either physical transfers of the water itself off the overlying land or transfers of rights to use groundwater that are derived from permits issued by the state or by natural resources districts. The Task Force seems inclined to suggest a fair amount of flexibility relative to such groundwater transfers.

The Task Force work is scheduled to finish its work by November and the final report is to be written and submitted to the Governor and the Legislature before the 2004 legislative session begins. If that schedule can be met, and it is probable that it will be, several legislative bills are likely to be considered during the 2004 legislative session. Future issues of *Nebraska Resources* will report on the recommendations made and how the legislature responds to those recommendations.

# Nebraska Resources

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Nebraska Resources page 6



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**Nebraska Department of Natural Resources....**

....dedicated to the sustainable use and proper management of the State's natural resources.